

RESOLUTION MEMORIALIZING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY IN OPPOSITION TO THE CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD REGULATORY PROPOSAL DOCKET ID NO. EPA-R03-OW-2010-0736, AND REQUIRING THE ENVIRONMENTAL PROTECTION AGENCY TO ADAPT THE PROPOSED TOTAL MAXIMUM DAILY LIMITS TO ADDRESS THE CONCERNS RAISED BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, STEUBEN COUNTY, STEUBEN COUNTY SOIL AND WATER CONSERVATION DISTRICT AND TOWN OF ERWIN

WHEREAS, clean water and healthy watersheds are a priority for New York farmers, which play a critical role in proven and successful local efforts to conserve and protect New York's natural resources; and

WHEREAS, the United States Environmental Protection Agency ("EPA"), Region 3, has issued draft Chesapeake Bay Total Maximum Daily Load (TMDL), which imposes new allocations and costly federal regulations on approximately 19 counties, 650,000 residents and 2,000 New York family farms within the New York State portion of the Chesapeake Bay Watershed area; and

WHEREAS, EPA is requiring each State within the Chesapeake watershed to develop a Watershed Implementation Plan ("WIP"), and

WHEREAS, the New York State WIP as dictated by EPA allocations will impose new limits on the Waste Water Treatment Plants ("WWTP") within the watershed, and

WHEREAS, the TMDL allocations imposed by EPA are inequitable in that New York State represents 4% of the population in the Chesapeake Watershed and 9.7% of the overall land area in the Watershed, 76% of which is forested, and

WHEREAS, New York State discharge is cleaner than any other state in the Watershed, and if all other downstream discharge were of the same quality as New York State's current discharge, the Bay would not have dead zones, and

WHEREAS, New York State is responsible for only 4% of the discharge to the Bay, and the EPA proposal requires New York State to remove 60% of its discharge, and

WHEREAS, only 44% of New York State discharge is deposited in the Bay, and under the proposed EPA limits, New York State must remove two pounds of material to receive credit for one pound, and

WHEREAS, atmospheric deposition was listed as a major source for nutrients found within Susquehanna River Basin waterbodies and New York State is the recipient of significant air deposition from many states located to the south and west including Michigan, Ohio, Indiana and Pennsylvania; and

WHEREAS, New York State deposition in the Bay represents 0.7% of the delivered total nitrogen to the Bay and 1.1% of the delivered total phosphorus to the Bay, and

WHEREAS, it is now projected to cost New York State as much as \$250 million over the next 15 years to retrofit and reconstruct existing infrastructure as a result of the EPA proposed limits, and

WHEREAS, it is not technologically possible for New York State to meet the EPA's proposed regulatory goal despite the expenditure of an estimated \$250 million; and

WHEREAS, New York State will not benefit economically from recovery of the Bay and therefore will receive no return on the estimated \$250 million to retrofit and reconstruct existing infrastructure as a result of the EPA proposed limits, and

WHEREAS, the EPA's proposed TMDL regulation imposes disproportionately heavier restrictions for water quality in New York in order to help other states meet their overall TMDL goal, while ignoring New York's excellent record of environmental accomplishments over the past 25 years, and

WHEREAS, the EPA's proposed TMDL regulation will require using State and Local conservation efforts and force unrealistic costs on the businesses, governments and residents within the Watershed area; and

WHEREAS, even if the other states achieve their EPA mandated allocations by 2025, their water would still contain higher nutrient loads per acre than New York's current 2010 load per acre, and

WHEREAS, the EPA has failed to incorporate a sufficient system of checks and balances to ensure a significant reduction of airborne nutrients deposition originating from areas outside of the Chesapeake Bay watershed, and

WHEREAS, the EPA has attributed declining Chesapeake Bay water quality solely to excess nutrient and sediment discharge to the bay from its watershed but has failed to fully investigate the adverse impact to the Bay's water quality resulting from over-farming and overfishing of filter feeders by those living on and near the Bay, and

WHEREAS, the TMDL allocations imposed by the EPA are based on a flawed model which does not even reflect the actual discharge values taken at the United States Geological Survey (USGS) gauging station in Towanda, PA; and has demonstrated drastic fluctuations in predicted nutrient loadings between model versions such as the 34% difference in predicted delivered total nitrogen loads between model version 5.2 and model version 5.3, and

WHEREAS, the TMDL allocations imposed by EPA are unachievable, are beyond the existing technology, and there is no scientific evidence that the high level backstops dictated by EPA can be achieved in the climate in New York State; and

WHEREAS, even with the elimination of animal agriculture and utilizing every best management practice available in the Watershed area, New York would still not be able to meet EPA's TMDL allocation; and

WHEREAS, the EPA's discriminatory, regulatory process disproportionately burdens New York State farm communities with costly mandates, weakens our rural economies, disrupts local food systems and provides no significant additional water quality protection for the Chesapeake Bay Watershed; and

WHEREAS, the EPA has failed to conduct a comprehensive environmental impact analysis of the implementation of TMDL including but not limited to assessment of socioeconomic related impacts, and

WHEREAS, the Town of Erwin opposes the EPA increasing its federal regulatory control and usurping state and local jurisdiction and authority in order to impose their TMDL, instead of working collaboratively with State agriculture and environmental protection agencies, Soil and Water Conservation Districts and local communities to address the Chesapeake Bay Watershed water quality concerns; and

WHEREAS, in order to satisfy EPA's regulatory goals without confirmation of water quality improvement, the EPA has not ensured realistic delivery of needed funding and technical assistance and has not provided regulatory flexibility to allow for implementation of continually improving on-farm practices in response to site-specific environmental variables; and

WHEREAS, each and every day farmers across New York work to improve their environmental sustainability, recognizing that appropriate natural resource management is critical to maintaining success of their businesses for future generations; supporting farmers in these endeavors is how government can best aid agriculture in protecting water quality; and

WHEREAS, the Town of Erwin supports state and locally driven collaborative initiatives which effectively use federal environmental funds and specifically address areas of high environmental risk and employ a farm-specific focus, such as NYS Department of Agriculture and Market's Agricultural Environmental Management Program; and

WHEREAS, the Town of Erwin supports the New York State Department of Environmental Conservation recommendation in its draft Phase I Watershed Implementation Plan which recognizes the environmental stewardship of New York farmers and inherent inequality of the current EPA proposal; and

WHEREAS, and the EPA allocations are unachievable therefore it is arbitrary, capricious and contrary to law for EPA to impose and for any state to enforce such TMDL allocations,

NOW THEREFORE, BE IT RESOLVED, that while the Town of Erwin fully supports responsible efforts to improve water quality in the Chesapeake Bay Watershed and protect our State's environment and natural resources, Town of Erwin finds the proposed EPA TMDL allocations to be arbitrary, capricious, and contrary to law, and accordingly, we object to the unfair and unattainable mandate the Chesapeake Bay TMDL forces upon our local governments, local communities, in particular those with WWTPs, and family farms; and be it further

RESOLVED, that the Town of Erwin urges not to adopt the proposed TMDL limits; and be it further

RESOLVED, that the Town of Erwin requires EPA to respond to the concerns raised by New York State Department of Environmental Conservation, Steuben County, Steuben County Soil and Water Conservation District and Town of Erwin, and be it further

RESOLVED, that the Town of Erwin requires EPA to adapt the proposed TMDL limits to address the concerns raised by New York State Department of Environmental Conservation, Steuben County, Steuben County Soil and Water Conservation District and Town of Erwin, and be it further

RESOLVED, the Clerk of the Town of Erwin shall forward a copy of this resolution to Judith Enck, Administrator, Region 2, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007-1866, and to the Water Docket, Docket ID: EPA-R03-OW-2010-0736, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave NW, Washington, DC 20460.